

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 26:010. Nontaxable service enterprises. [~~Service enterprises in general.~~]

5 RELATES TO: KRS 139.010, 139.200

6 STATUTORY AUTHORITY: KRS 131.130, 139.010[~~131.130(1)~~]

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the  
8 Department of Revenue to promulgate administrative regulations necessary for the administration  
9 and enforcement of all tax laws in Kentucky. This administrative regulation establishes sales and  
10 use tax requirements for nontaxable service enterprises. [~~service enterprises in general.~~]

11 Section 1. (1) Persons engaged in the business of rendering nontaxable services [~~service~~] shall  
12 be classified as consumers, not retailers, of the tangible personal property, digital property, and  
13 taxable services specifically enumerated in KRS 139.200, which they use incidentally in rendering  
14 the service. Tax shall apply to the sale of tangible personal property, digital property, and taxable  
15 services specifically enumerated in KRS 139.200 to consumers.

16 (2) The list in this subsection shall serve as general examples of nontaxable service enterprises:

17 (a) Advertising agencies;

18 (b) Automobile detailers;

19 (c) Banks;

20 (d) Barbers;

21 (e) Beauty shop operators;

- 1        (f) Shoe shiners;
- 2        (g) Taxidermists;
- 3        (h) Tire repairers; and
- 4        (i) Similar enterprises.

- 5        [~~(b) Banks;~~
- 6        ~~(c) Barbers;~~
- 7        ~~(d) Beauty shop operators;~~
- 8        ~~(e) Bootblacks;~~
- 9        ~~(f) Cleaners;~~
- 10       ~~(g) Launderers;~~
- 11       ~~(h) Shoe repairmen;~~
- 12       ~~(i) Taxidermists;~~
- 13       ~~(j) Tire repairers; and~~
- 14       ~~(k) Similar enterprises.]~~

15       Section 2. (1) Persons rendering nontaxable professional services shall be classified as  
16 consumers, not retailers, of the tangible personal property, digital property, and taxable services  
17 specifically enumerated in KRS 139.200, which they use incidentally in rendering their services.

18       (2) The list in this subsection shall serve as general examples of persons rendering nontaxable  
19 professional services:

- 20       (a) Accountants;
- 21       (b) Architects;
- 22       (c) Audience research service providers;
- 23       (d) Cable television service providers;

1 (e) Construction information service providers;

2 (f) Doctors;

3 (g) Engineers; and

4 (h)[~~(g)~~] Lawyers.

5 Section 3. If a person engaged in the business of rendering nontaxable services also regularly  
6 engages in the business of selling tangible personal property, digital property or taxable services  
7 to consumers, that person shall be classified as a retailer with respect to these [~~the~~] sales, and shall  
8 obtain permits, file returns, and remit tax on those sales.

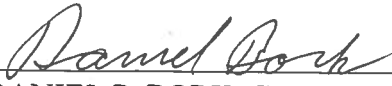
9 Section 4. Persons rendering services specifically enumerated in KRS 139.200 are retailers  
10 subject to sales tax.[~~measured by the sales.~~]


11 Section 5.[~~4~~.] (1) This administrative regulation shall replace Revenue Policies 51P440,  
12 51P441, and 51P442.

13 (2) Revenue Policies 51P440, 51P441, and 51P442 are hereby rescinded and shall be null,  
14 void, and unenforceable.

103 KAR 26:010

APPROVED BY AGENCY:

  
\_\_\_\_\_  
DANIEL P. BORK, COMMISSIONER  
Department of Revenue  
Finance and Administration Cabinet

  
\_\_\_\_\_  
Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on July 25, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875 (fax), [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov) (email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 26:010

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by updating the administrative regulation title, updating the statutory authority, specifying the regulation is related to nontaxable service enterprises, updating the types or properties and services consumed by nontaxable service enterprises, updating examples provided and specifying that service providers detailed under KRS 139.200 are subject to sales tax.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language and information currently contained in the regulation. Statutory references are updated.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to

comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 26:010

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: